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Supreme Court, U.S.
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No. 05-5966

In The
Supreme Court of the United States

ERIC MICHAEL CLARK,

Petitioner,

vs.

STATE OF ARIZONA,

Respondent.

On Writ Of Certiorari To The Arizona Court Of Appeals

JOINT APPENDIX
VOLUME I, PAGES 1 TO 104

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IN THE SUPERIOR COURT*
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff,	)	
vs.	)	Case No. CR 2000-538
ERIC MICHAEL CLARK, Defendant.	)	

REPORTER'S TRANSCRIPT
OF
BENCH TRIAL PROCEEDINGS
DAY 4

August 8, 2003
9:30 o'clock a.m.
Flagstaff, Arizona

BEFORE: HONORABLE H. JEFFREY COKER
Judge of the Superior Court

PREPARED FOR: THE DEFENDANT (Certified Copy)

* * *

[77] Your Honor, just for the record, at this time we're moving on behalf of Mr. Clark for a directed verdict on the charge of first degree murder and essentially claiming that there has not been direct or circumstantial evidence presented at this point in the case to show that Eric Clark knew that Officer Moritz was actually a police officer and that he was actually intending to kill a police

* Any typographical and/or incorrect punctuation found in the following Joint Appendix pages were intentionally left to show accurately how the original documents appeared.

officer at this point. And we would ask the Court to direct the verdict of not guilty on that charge and reduce the charge accordingly to manslaughter, based on the evidence before it. Thank you.

THE COURT: So, Counsel, you're moving on the basis of two grounds, that the State has failed to show that Mr. Clark knew that Officer Moritz was a police officer or that he intended to kill him?

MR. GOLDBERG: That he intended to kill specifically a police officer, yes.

THE COURT: Thank you. Counsel?

MR. POWELL: Judge, very briefly, there's been an abundance of evidence, we heard from independent witnesses that Officer Moritz was in a fully marked [78] squad car, he activated his overhead lights. At one point he had to put on his siren. The defendant did in fact comply and pull off the side of the road. Officer Moritz parked off center, like a police officer would. He exited the vehicle, was in full gear walking towards the Defendant. Once the shots were fired, we know that then Captain Cooper took approximately four minutes to arrive there and he said, from his car, and he wasn't all that close, he was able to see the victim there, he was able to look at his face and see he was in dire health, so there was plenty of light to see, Judge.

There's no way in the world that anyone would not have known this was a police officer. That was an intentional shot. There were numerous shots, it wasn't just one. There was no sign of struggle. Your Honor, we ask the motion be denied.

THE COURT: Thank you. Anything further, Mr. Goldberg?

MR. GOLDBERG: No, Your Honor. I just for the record wanted to reserve the right under the Rules allowed to reurge this motion at the completion of the defense case based on the evidence you hear on whether there is sufficient evidence that Eric Clark in his state of mind at that moment knew that this was a police officer and intended to kill a police officer.

[79] THE COURT: Thank you. I will take your motion under advisement. I want to have an opportunity to review the memoranda that has been submitted by the State.

* * *

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff, vs. ERIC MICHAEL CLARK, Defendant.	)))))))	Case No. CR 2000-538

REPORTER'S TRANSCRIPT
OF
BENCH TRIAL PROCEEDINGS
DAY 5

August 12, 2003
9:45 o'clock a.m.
Flagstaff, Arizona

BEFORE: HONORABLE H. JEFFREY COKER
Judge of the Superior Court

PREPARED FOR: THE DEFENDANT (Certified Copy)

* * *

PROCEEDINGS

[4] THE COURT: This is the time and date set in the continuation of the trial in the matter of State of Arizona versus Eric Clark, cause number 00-538. Let the record reflect the presence of the parties.

Counsel, I have researched the authorities, I have read the memoranda that's been supplied. At this time I'm going to deny the defendant's Rule 20 motion. At this point

in time, we will begin the phase of the trial which deals with the mental health of the defendant.

* * *

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff,	)	
vs.	)	Case No. CR 2000-538
ERIC MICHAEL CLARK, Defendant.	)	

REPORTER'S TRANSCRIPT
OF
BENCH TRIAL PROCEEDINGS
DAY 6

August 19, 2003
9:03 o'clock a.m.
Flagstaff, Arizona

BEFORE: HONORABLE H. JEFFREY COKER
Judge of the Superior Court

PREPARED FOR: THE DEFENDANT (Certified Copy)

PROCEEDINGS

* * *

[5] THE COURT: Guys, I wanted to go on the record in the Clark case. I don't know if you want to have your client here. I was going to indicate where I want to go on this insanity issue, intent, the Mott case, that whole thing. I don't know whether you want to have your client here or not.

MR. MIDDLEBROOK: No. We can waive his appearance.

THE COURT: What I have intended or what I'm going to do after reading all the Mott case is – and recognizing that much of the evidence that you're going to be submitting, in fact all of it, as far as I know, Bryon, that has to do with the insanity could also arguably be made along the lines of the Mott issues as to form and intent and his capacity for the intent. I'm going to let you go ahead and get all that stuff in because it goes to the insanity issue and because we're not in front of a jury. At the end, I'll let you make an offer of proof as to the intent, the Mott issues, but I still think the supreme court decision is the law of the land in this state. The unpublished federal opinion, which gave a relief under writ of habeas corpus, I don't [6] think is the law of the land of the State of Arizona, but I will certainly allow you to preserve the issue; you can argue or not argue, but you can make an offer of proof at the conclusion of the case, but I don't think its the law of the land at this point. And then at least that preserves it on appeal if something happens later on down the road. But right now I'm bound by the supreme court decision in Mott and we will be focusing, as far as I'm concerned, strictly on the insanity defense.

* * *

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff, vs. ERIC MICHAEL CLARK, Defendant.	)	Case No. CR 2000-538

REPORTER'S TRANSCRIPT
OF
BENCH TRIAL PROCEEDINGS
DAY 9

August 22, 2003
8:58 o'clock a.m.
Flagstaff, Arizona

BEFORE: HONORABLE H. JEFFREY COKER
Judge of the Superior Court

PREPARED FOR: THE DEFENDANT (Certified Copy)

* * *

[12] (Whereupon, the witness was duly sworn by the Clerk.)

DR. BARRY MORENZ

called as a witness herein, having first been duly sworn, was examined and testified as follows:

THE COURT: Sir, if you'll follow the bailiff around, he'll have you seated.

DIRECT EXAMINATION

BY MR. MIDDLEBROOK:

Q. Good morning, Dr. Morenz.

A. Good morning.

Q. Would you please tell us your name and spell your last name for us?

A. Yes. My name is Barry Morenz, it's M-o-r-e-n-z.

Q. How are you presently employed?

A. Um, I'm employed at the University of Arizona Department of Psychiatry, College of Medicine.

Q. And are you a psychiatrist?

A. I'm a psychiatrist, yes.

Q. Would you tell us a little bit about your [13] educational background that – about your educational background?

A. Yes. I graduated from Indiana University Medical School in 1978. I then came to the University of Arizona where I did one year of an internship and then three subsequent years of a psychiatric residency, which I completed in 1982.

Q What is a residency?

A. Residency in psychiatry is where you are working with psychiatric patients, wide variety of psychiatric patients in a wide variety of settings under the supervision of fully trained psychiatrists, professors at the medical school.

Q. And are you certified in any particular areas?

A. I'm certified by the American Board of Psychiatry Neurology in psychiatry, with added qualifications in forensic psychiatry.

Q. Do you also teach?

A. Yes. I teach at the medical school. My office is at the medical school. I teach supervised residents treating general psychiatric patients. I teach a course in interviewing. I teach a course in ethics and forensic psychiatry and a variety of other seminars that I give regularly.

Q. And then can you just tell us a little bit [14] about any type of professional organizations that you belong to?

A. I belong to the Pima County Medical Society. I belong to the American Psychiatric Association. The Arizona Psychiatric Association. I belong to the American Academy of Psychiatry and Law. I belong to the Association and Treatment of Sexual Abusers. Those are the main organizations I'm a member of.

Q. And then have you ever published any articles related to psychiatry?

A. Yes. I published articles related to jealousy, sex offenders, and ethics.

Q. And as to – you mentioned some other teaching engagement. Basically, do you teach other doctors about particular areas within your field?

A. Yes.

Q. Doctor, have you ever – have you ever worked in the area of evaluating defendants for insanity?

A. Yes, I have.

Q. Before we get there, I'd like to back up a little and ask about your clinical experience with patients. What do you do as a psychiatrist with patients?

A. You mean currently?

Q. Correct.

[15] A. Well, I have a number of general psychiatric patients that I see myself. I supervise residents who are treating patients in an outpatient setting in our emergency room and in our inpatient unit. So I have contact with a variety of patients in – both with minor psychiatric problems and very severe psychiatric problems.

Q. And then in the forensic setting, have you ever been qualified as an expert in federal or state court?

A. Yes, I have.

Q. Okay. As it relates to the definition of insanity under A.R.S. 13-502, have you conducted evaluations as it relates to that statute?

A. Yes. I have conducted many evaluations as it relates to the determination of legal insanity in Arizona.

Q. And can you tell us whether you're typically hired by the state? Typically hired by the defense?

A. Um, I have been hired by both and appointed by the court. And, you know, the percentages sort of vary from year to year, but overall it's probably been roughly even split.

Q. Okay. And then can you tell us on a day-to-day basis kind of what's – what the split would [16] be between

your forensic work that you do for the courts and your clinical practice?

A. I would say roughly about 50 to 60 percent is forensic work, about 20 to 25 percent is teaching of one form or another, and then another 20, 25 percent is more clearly clinical work.

Q. Would you tell us what your understanding of insanity is in the State of Arizona?

A. Um, in Arizona insanity is defined by an individual who, at the time they committed the act, were suffering from a mental disease or defect such that they did not know that the acts they committed were wrong.

Q. Doctor, if I ask you for an opinion in this case, would you agree with me that your opinions will be based upon facts and data or interviews or observations that are reasonably relied upon in your field?

A. Yes.

Q. And, also, if I'm asking for an opinion, would you agree to limit your opinion, unless you tell us whether you're speculating or not, to express your opinion within a reasonable degree of medical probability?

A. Yes.

Q. Doctor, I'd like to talk a little bit about the mental disorders of schizophrenia. First of all, how [17] would you define schizophrenia?

A. Schizophrenia is deterioration or disintegration in individual's emotional and psychological functioning. It's a pretty profound disorder with profound consequences for the individual that's afflicted. There's many different

symptoms that are manifested in that individual with schizophrenia, everything from delusional beliefs, hallucinations, to cognitive deterioration, an inability to just process information to, say, pass courses in the way that an individual had been able to prior to the onset of illness.

Schizophrenia's onset is usually in adolescence, early adulthood, and can be progressive and can become worse over time; although, that's not always the case.

Q. Within the research in your field, has there ever been a way to determine the organic cause of schizophrenia?

A. No.

Q. Is there a – within schizophrenia, is there a distinction made between a psychosis and a delusion?

A. Well, a psychosis is a general term that describes an individual who has gross disturbance in their reality testing and, usually, that's manifested by [18] a combination of delusions and hallucinations.

Q. So when we talk about – for example, if I were to ask you the question about whether Eric was psychotic, we – we're really talking about a constellation of, instead of delusion being a more specific symptom?

A. Yes.

Q. What is a delusion?

A. A delusion is a false belief, not based in reality.

Q. And are there different types of delusions?

A. Oh, sure. There's paranoid delusions and there's grandiose delusions, which are among the more common;

paranoid delusions simply being fear that the CIA is trying to kill me, or grandiose delusions, belief that I'm Jesus Christ.

Q. And then there are – and within the medical field do they make a distinction between bizarre and nonbizarre delusions?

A. Ah, yes.

Q. And what is the distinction between those two?

A. Um, well, a bizarre delusion would be a delusion such as Eric Clark has demonstrated a belief in aliens and it's just totally preposterous. And, you know, a less bizarre delusion, sometimes we see with [19] people who have become extremely depressed and are often, you know, very suicidal. They feel very hopeless. They may develop delusional beliefs about their future and their hopelessness that isn't – you know, there's no aliens, there's no CIA out to get them, yet, still, they're so depressed that their understanding of – about their future and about their place in the world is – is very distorted and delusional.

Q. When you were talking about cognitive impairments that a schizophrenic may suffer, how is that manifested?

A. Well, a good example is with Eric Clark. In 5th, 6th, 7th grade, he had took Stanford 9 tests and he did, you know, at or above grade level. By the time he was in the 10th grade, his Stanford 9 tests had diminished to the point where he was now functioning at below grade level. And that kind of cognitive deterioration can be seen as an early sign of schizophrenia.

Q. Do schizophrenics have problems performing complex tasks?

A. Schizophrenics often become unable to perform complex tasks that we take for granted. That often forms the basis of their difficulty in working, in attending school. They just cannot manage to manage a routine. [20] They can't handle the demands of classroom work. They can't handle the demands of a job at a complex industrial society.

Q. Is there different subtypes of schizophrenia?

A. Yes. There's several subtypes.

Q. Okay. And how are those – I don't need to go blow by blow through each subtype, but are they categorized by a certain constellation of symptoms?

A. Yeah. They're sort of different flavors or colors, if you will, of this schizophrenic process.

Q. Okay. And can you just tell us what some of the general subtypes are?

A. Paranoid, catatonic, disorganized and undifferentiated.

Q. The paranoid type, what is the – what's the identifying constellation of symptoms within that subtitle?

A. The – the identifying symptoms are the presence of delusions, usually paranoid and grandiose delusions, and often hallucinations, as well.

Q. The DSM-IV – what is DSM-IV?

A. Ah, the DSM-IV is the diagnostic and statistical manual of mental disorders. The fourth edition, it is

actually a text revision edition revision as well now, and it's a compendium of different [21] psychiatric diagnoses with the criteria that make up those diagnoses. So it's really just a textbook that guides clinicians in diagnosing various mental illnesses. And there is practically a checklist for each of the different disorders so if you have, you know, the required items in the check list, then you meet the criteria for that diagnoses.

Q. So if we wanted to, we could go through the DSM-IV, look at schizophrenia, look at paranoid subtype and see within it the various symptoms that are – that are indicated there as a guideline for making that type of diagnosis?

A. Yes.

Q. Is the paranoid type schizophrenia characterized by any form of disturbed thinking?

A. Well, all types of schizophrenia are characterized by a variety of forms of distorted thinking. And, you know, common among people with schizophrenia is a disturbance in logic; their, you know, thinking really doesn't make a whole lot of sense. It's not connected. One thought is not connected well with another thought. If you read schizophrenic writing it may sort of make sense but, you know, you keep trying to understand the meaning, it often just is not there. You can't grasp what they're trying to communicate. Their [22] communication is often very idiosyncratic. They use a kind of prophet logic that other people don't share. And that makes their thinking, you know, very disordered, very disturbed, very hard to understand.

Q. Do schizophrens have difficulty distinguishing between their internal reality and external reality?

A. Yes. Schizophrenics do not distinguish very well between sort of their own internal world, where their world stops, someone else's begins and, you know, how they fit into an external reality. And one of the things that you can see sometimes with schizophrenics and you see with – you saw with Eric Clark is when his symptoms were particularly severe, he was clinging to his mother, things like holding her hand and putting his arm around her, which was probably an effort on his part to grab onto, in a physical but also a psychological sense, his mother's reality because his reality was disintegrating. Psychiatrists talk about the need with schizophrenic patients to lend them your own ego, kind of give them some structure that they can structure their own world with, because they can't do it very well. So that's – that's this internal and external reality, they kind of merge with other people and with the environment, and they can't sort of tell the difference between, you know, where they end and others in the environment begin.

[23] Q. Is another possible example of that where in your interview with Eric and your discussing about what type of plea is occurring, that when he just references me, says, I'm just going to do what Bryon wants me to do, is that another reference to that grasping on or just going along as opposed to having an independent ego?

A. Yes. Absolutely.

Q. People who suffer from schizophrenia, is it required that they have some type of command hallucination in their image?

A. No. To diagnose a schizophrenia – paranoid schizophrenia, all you need is bizarre delusions in addition to psychosocial decline.

Q. And I'd just like to clarify, when I use the words, command hallucinations, what does that mean to you?

A. A command hallucination – first, an hallucination is a sensory perception without any kind of sensory stimulus. The most common in schizophrenics are auditory hallucinations where the individual hears a voice talking to them and they don't know where it's coming from and there is no one talking to them, there is no sensory stimulus there, so that's the hallucination. And that kind of command, the command hallucination, is where an individual experiences a voice or force or a [24] power that communicates with them, talks to them, and tells them, commands them what to do.

Q. And that's not required in order to be a schizophrenic or to have a diagnosis of schizophrenia?

A. No.

Q. Does a schizophrenic's social habits start to deteriorate or deteriorate?

A. Yes. That's – that's really required for the diagnosis of schizophrenia, that you see a decline in an individual's social habits.

Q. Would an example of that be, for example, leaving the bathroom door open while you urinate or defecate in the family room?

A. Yes. Other examples being not bathing, not taking care of one's appearance, dressing oddly. Eric Clark would wear multiple layers of clothes. That's another example of just decline in basic social habits.

Q. People suffering the paranoid type of schizophrenia, do they often have delusions about the world ending, that type of thing?

A. Yes. The delusion of an apocalyptic event is very common with paranoids.

Q. And then you've been practicing as a psychiatrist for over 20 years. Has there been a shift, so to speak, in the types of delusions you see [25] schizophrenics suffer?

A. Yes. It – you know, 20 years ago, some of you still remember, that was the year of the cold war, so there was often a lot of delusions about the CIA, KGB, this kind of thing, or religious delusions were more common. Now more common delusions have to do with aliens, like Eric Clark's delusions.

Q. And when you look at a group of people that are schizophrenics, why do you see the shift of types of delusions?

A. It's just the delusions to some degree reflect what may be transpiring in the culture at that point in time, what popular themes are. Certainly over the past few years there have been many movies, and especially around the time of Y2K there was a lot of speculation and beliefs about aliens.

Q. Is – are schizophrenics – do they have difficulty with their sensitivity to critical or rejection-type situations?

A. Yes. Schizophrenics become exquisitely sensitive and to trivial forms of rejection that most people wouldn't even notice. They really misinterpret these kinds of social cues and often react very dramatically. One example is a

woman who was – who prepared a dinner for some friends. She was [26] schizophrenic. The friends came. It was a very nice dinner. They really, you know, insisted on helping clean up. And as they moved in the kitchen and were cleaning everything up, she became extremely upset with them, you know, threw them out of the house, yelling at them. And when her psychiatrist talked to her later, the problem was that she thought that – that they didn't think that she could organize her life very well, so they were going to organize it for her. And it made no sense, but that was her kind of sensitivity to what she perceived as rejection and criticism.

Q. And is there also examples where a schizophrenic overreacts to such trivial things as not being allowed to watch a certain TV program?

A. Yes. An example of that was a young schizophrenic wasn't allowed by his father to watch a TV program and he quickly killed his father, you know, just, you know, out of the blue, totally without any warning at all.

Q. In that regard, Doctor, can you predict as a medical doctor – or as a psychiatrist, the types of responses schizophrenics are going to have to a particular situation?

A. No. It's – it's especially difficult with schizophrenics to predict what they will do next or how [27] they will think next. Um, they can – they can develop beliefs fairly quickly, fairly dramatically, through inconsequential kinds of events, you know, seeing, you know, someone walk across the street may all of a sudden, you know, they feel that that has special significances, has told them that this means that, you know, the end of the world is coming, you know, in two weeks, some other kind of meaning, and, you

know, it just came out of the blue, you know, and you ask them, well, how do you know that? I just know. It's not based on logic, it's not based on the shared kind of understanding we have of the world. It's their own idiosyncratic logic.

Q. And, actually, that's what I was going to get into next, is oftentimes, especially as a forensic psychiatrist, you're looking at a particular schizophrenic's behaviors. Is there any form of rationality you can place as to their thinking?

A. No. Often it's just – we attempt to try to make some kind of sense, and there are threads sometimes that you can pull together from what schizophrenics say to develop some kind of communication with them. You know, it's been said that you have to learn to talk schizophrenese, kind of another language, and that can enable some – some bonding with a schizophrenic patient, it can enable you to help them somewhat. But, really, [28] ultimately, their thinking, their beliefs, do not make sense. They're irrational. They're illogical.

Q. I just want to stay with these delusions just a little bit longer. Are delusions – when you're looking at a schizophrenic and their delusions, are these something that, for example, a particular delusion will have a long period, a slow, what I would call, incubation period, or is it something that can happen very suddenly?

A. It can happen all of a sudden, and it can also kind of gradually grow. You know, it can start suddenly and then get elaborated on, in weeks and months, and then change to something else. It's very hard to keep track.

Q. There is no rhyme or reason to it?

A. There often is no rhyme or reason.

Q. With schizophrenics and their delusions, these false beliefs that they hold, is there any way to correct them with logic through their thinking?

A. No. The conversation that I had with Eric shortly before this was, you know, fairly bizarre, talking a little bit about what had happened in court and, you know, his understanding and what may be transpiring. And it just – just didn't make a whole lot of sense and I wasn't about –

Q. I'm saying – you're talking about your interview with him this morning?

[29] A. Yes. And I – I was not going to talk him out of his beliefs in any way.

Q. Would an example of that be where he believes his mother is an alien and apparently still believes his mother is an alien?

A. Yes. He still believes that there are 50,000 aliens in Flagstaff. What has changed is he doesn't feel that they're as malevolent as he used to believe. That seems to be a change. And why that's taking place is not completely clear.

Q. Is it possible that the Haldol that he's been on for nearly eight months now may have had some affect on that?

A. I think that that's had an impact on just making the delusion have less power in his mind. It's still there, but it's like less important, it's receded to the background somewhat.

Q. When we're talking about a schizophrenic's abilities to communicate verbally, is there any particular concerns there you have as a forensic – or excuse me – as a psychiatrist?

A. Um, schizophrenics' language is often used more in the service of self-expression of some form instead of an attempt to communicate, make contact, develop a relationship with another person. And I think [30] an example of Eric's language difficulties is his interest in studying Chinese. That may be something that's important to him in a form of self-expression, but in no way is that going to help him communicate with his family, with the staff at the hospital, or his attorneys or any friends that he's going to meet. You know, his ability to really make that form of contact, that kind of relationship, that kind of communication, is very impaired.

Q. I have to talk to you about drug use among schizophrenics because that's been a dominant issue in this trial to some degree. What do you see – excuse me. Do you see that as an issue when you're treating or when you're dealing with schizophrenics?

A. Today it's very common with schizophrenics to use drugs, often marijuana and alcohol. Those are the common ones. And the drug use is problematic. They use the drugs, initially, they find that the sedating effects help quell, help diminish some of their symptoms, but in the long run, as they continue to use the alcohol and the marijuana, it only makes their condition worse. It exacerbates it. So it's sort of a mixed picture for them, they feel some benefits temporarily but probably overall it's just hurting them.

Q. Do they understand that?

[31] A. No, they don't understand that. And you're underscoring a really important point. And it continues to be the case with Mr. Clark, he doesn't believe that he has any kind of illness or any kind of difficulty. And he reiterated that to me this morning when I was talking to him. He, you know, says, well, you know, I know I have, you know, these beliefs in aliens, you know, and they – we – they have not talked a lot about that in court. And I said, well, I'm going to talk about that. And he said, well, I think Bryon will be happy that you're talking about it but, you know, I'm – you know, I don't care if you do or not.

Q. And is that also another example of that with Eric is that he does not like the antipsychotic medications that he's been on?

A. We talked about the medications and he doesn't want to take the medications. He doesn't want to take any medications. He believes that it's poisoning him. We had quite a little conversation about taking Cogentin, which can combat the side effects of the Haldol. And, you know, he is a little stiff. He's feeling some of the side effects of the Haldol. And I said, well, the Cogentin could really help. And he says, well, I know, but I think it really – it really – I just – it wasn't logical. He just sort of, well, I don't want to take it [32] because it's poison and the Haldol is poison and it makes me in my thinking worse. And he just doesn't see that he has any problems that he needs any treatment for.

Q. I'd like to turn now to the issue of violence and its predictability among schizophrenics. First of all, I'd like to talk about a particular area of violence, suicide. Is that an issue among schizophrenics?

A. Yes. Suicide is a very common problem with schizophrenics. It's estimated that within 10 years of the onset of illness, 10 percent of schizophrenics will commit suicide. 40 percent attempt suicide. I mean, it's a really, really severe problem. And it's a problem that can happen precipitously, you know, the person is sort of managing and then all of a sudden kills themselves, you know, whether it's in response to a belief that – for instance, a common belief among schizophrenics is that their parents are not really their parents or that their – you know, they were adopted, or in Eric's case, that his mother is an alien. And, again, this kind of goes back to probably a deep-seated belief that they're being rejected by their parents and others, as well.

Q. And they respond very quickly?

A. I mean, the suicide can be just sort of one [33] moment, you know, they're – they seem fine, they're placid, they're, you know, seemingly very comfortable, and the next minute they have jumped out the window.

Q. Is there any discussions amongst psychiatrists as to why suddenly they do these things as far as, for example, command hallucinations, telling them to do it?

A. Command hallucinations can, but that's probably not the major driving force. It is hard to understand, other than these are individuals who are extremely troubled. They do not experience much pleasure in the world, if any. Their worlds are chaotic, confusing, frightening. And Eric is a wonderful example. I mean, after he was arrested, he was – in the transcript of the statements he made when he was in the jail, he just kept saying, take me to heaven, take me to heaven, you know, I don't want to be poisoned anymore. End this torment. And he had made those same

kinds of comments to his mother in the months and, you know, maybe as much as a year or more prior to his arrest for the killing of the policeman.

Q. Words to the effect – I think his school counselor said words to the effect of, I can't take it anymore?

A. Right. And his mother was appropriately very, very concerned about this, fearing that he would kill [34] himself. They found him with a gun at one point and were very worried that he would hurt himself. They were worried that he might hurt some member of the family. They became frightened of him.

Q. Are schizophrenic patients typically more violent?

A. Yes, schizophrenic patients are more violent than the general population.

Q. And the paranoid type?

A. Especially of the paranoid type with active delusions or hallucinations.

Q. Do – are command hallucinations, do they play an important role in the onset of violence or in a violent – or in the occurrence of a violent act?

A. They can, but that's not either necessary and does not even occur probably in the majority of cases.

Q. Are there examples where an inpatient in an inpatient setting where one patient attacks another without the command hallucination?

A. Yes. And probably, you know, what happened to Eric from his roommate was an example of some – something that the other patient perceived Eric to do, either

was somehow malevolent, was somehow rejecting of this other patient and the patient came up and scratched him with some kind of metal item across the face. He [35] still has a scar from that. And that came totally out of the blue, had given no indication that he had any problem with Eric or said anything to Eric that, you know, why did you say that or what did you do this for? No one had any idea that he would do that.

Q. In that regard, when we're talking about the symptoms of schizophrenia and their manifestations through behaviors or through voices or whatever, are there usually clear warnings that a violent act is going to occur?

A. No. The violent act may come just without any warning whatsoever. Another example we talked about is a schizophrenic patient is being treated by a general physician, he kept going in and talking about, you know, various problems and the physician did a workup and, you're fine. There's nothing wrong. You don't need to come back here. The patient left and a few hours later killed the doctor. You know, just – how could anyone predict that?

Q. Okay. Let me ask you this, Doctor: Based on your review of the records, your interviews, your observations of Eric, did – has he exhibited many of these signs and symptoms we have discussed so far?

A. He's exhibited virtually all of the signs and symptoms we've discussed.

[36] Q. Based on your review of the records, your observations, your training, your experience, is it highly probable that Eric, as a result of a mental disease, was insane at the time of the shooting?

A. Yes.

Q. Let's talk about what's led you to that – to that opinion. First, let's talk a little bit about the basis of your opinion. What did you use to formulate your opinion?

A. Your Honor, I reviewed fairly extensive documents from the state hospital, from Maricopa County Jail, Coconino County Jail, some of the police reports, both for the time in 2000, as well as some of the instances before that, where he was arrested, I reviewed the videotape and a transcript of when – of the night he was arrested, I reviewed photographs of his room, I reviewed many witness statements, I reviewed many psychological and psychiatric evaluations that have been done, I have interviewed Mr. Clark, I interviewed his mother, I reviewed all of that material in coming to my conclusion.

Q. What are some of the significant facts that you relied on in coming – first of all, let me ask you this: Based on your training and experience and the information that's been made available to you, do you [37] have an opinion as to whether Eric does suffer from a mental disease or defect?

A. Yes. I believe that he suffers from paranoid schizophrenia. I believe it's been present continuously probably from around, you know – the first symptoms were probably present in early 1999 and they gradually grew more pronounced and, you know – and still are pretty severe; although, they're a little less severe now with the Haldol that he is taking.

Q. As far as a indicator of outcome when the schizophrenic symptoms onset earlier versus later in life, is there a distinction – I mean, is there a predictability of outcome?

A. Earlier usually has the worse prognosis.

Q. And why is that?

A. No one fully understands.

Q. In – in your review of the records, your interviews, the information that's been made available to you, did you consider an issue of malingering?

A. Yes.

Q. And did you rule that out?

A. Yes, I did.

Q. Let's talk about some of the facts that you or observations that you've made as you've looked through these records and talked with Eric and talked with his [38] parents that were significant to you in formulating your opinion that Eric is paranoid schizophrenic.

A. Okay.

Q. You've authored a report, I believe – you've authored several reports, but the one in particular dated July the 12th, 2003, do you have that in front of you?

A. Yes.

MR. MIDDLEBROOK: Judge, that's also in the defense exhibit notebook, if at times you'd like to follow along with that.

THE COURT: Which exhibit is that?

MR. MIDDLEBROOK: Should be Exhibit 5A.

THE COURT: Thank you.

Q. BY MR. MIDDLEBROOK: First of all, what's the significance of taking a history or developing a history in a case like this?

A. Well, its crucial to understand the evolution of the individual's problem and problems.

Q. Okay. Did Eric suffer from a psychosis of any type prior to the shooting?

A. Yes. I believe that he was very psychotic for months, if not over a year, prior to the shooting.

Q. And can you give us examples of that?

A. Um, I think that the – probably one of the better examples is his continual reference to his mom [39] periodically that they are after him; his references and actions based on these beliefs that the water in his house was being poisoned; that the food was being poisoned, those are also evidence of delusional beliefs, evidence of psychosis; his statements that he made about, um, that a rap star was going to talk to him and somehow he was going to become president, you know, evidence of a grandiose delusion; and then his discussions at times asking his mom if she was really his mom or were they aliens, again, evidence of delusional beliefs; and then his behaviors around the time that he's experiencing these delusional beliefs, washing of the clothes, the – the turning on of water in the house, the shutting the blinds, the turning of volume up on all of the TVs and radios, which, by the way, I think probably was evidence that he was experiencing auditory hallucinations and that this turning up of all the volume, which schizophrenics often describe, is an attempt to drown out the voices that they are experiencing. I don't

know that for sure. He's never admitted to these hallucinations, but I'm still suspicious that that was going on.

Q. And let me slow down. This is a common symptom that you see among schizophrenics that the turning up of the TV, the radios, things like that?

A. Yes.

[40] Q. And, then, subsequently reporting the reason they do that is because they try and get the voices to drowned out?

A. Yes. Yes. So they're not so loud, so they don't have to listen to them.

Q. Okay. We were talking about other evidence of his psychosis.

A. Yes. And then he stops grooming himself, he is attempting to cut his own hair, he's wearing a shower cap, he, I guess, wears these stocking caps on his head, is really getting to look just fairly bizarre. And it seems that this may have been in the service of preventing himself from being poisoned by the aliens. And I'm imposing a little bit of logic here that may not exist, you know. I'm inferring that this may have been part of the motivation, but I don't know for sure, because he's never been able to really fully communicate why he did all these things. Other evidence was his putting the strings with beads in his room and in his car, carrying a bird around in his car, putting quarters, all apparently to prevent others from intruding into his personal spaces, for what fear is not completely clear, but the behavior was becoming increasingly bizarre and reflected his delusional beliefs and confusion.

Q. In your review as you went through this, was [41] there ever a window of lucidity for Eric?

A. I don't think that there was a window of lucidity. There were some periods where he was a little better than others, but there was never a period where like for several months he was just fine.

One instance where he seemed to be a little better was after January 1st, 2000, came around and the end of the world didn't happen, he felt a sense of relief and he went back to school, but things didn't go well. You know, he was strange at school. And he may have held things together for a few weeks, but it wasn't long before it was obvious to his parents and his teachers and the other students that he was very weird. He wasn't like he used to be. There was something wrong with him.

Q. Speaking of that, Doctor, did you see this photo of Eric?

A. Yes. I was very surprised when I came in to your office last night and you had these two pictures up there and, you know, I just glanced at it quickly, and my initial thought was, oh, that must be a picture of one of Bryon's sons or something. And I took a closer look and I thought, oh, my, that's Eric. You know, hardly recognized him.

Q. And just for the record, I'm holding up the [42] picture of Eric's fall 1998 football picture.

And so when students have come into this courtroom and his family has come into the courtroom and talked about these appearance changes, we actually were seeing very dramatic changes, especially when you look at Eric, this football photo, and just the overall look of his health,

compared to what we see in January – or excuse me – June 21st of 2000?

A. This is the psychological, emotional disintegration that we see with schizophrenia.

Q. Is the fact that Eric was suffering a psychosis, does that equate to the fact that he – that you believe he was insane at the time of the shooting?

A. No. Psychosis does not equate with legal insanity. There has to be more.

Q. The fact that Eric has never indicated, for example, that aliens made me do this, I was hearing a voice from God, that type of hallucination, is that a factor in your determination whether Eric was insane at the time of the shooting?

A. Well, I think it's kind of more of a factor that tends to argue against his malingering, kind of creating symptoms to explain forbidden behaviors. And I have had people who have been very eager to tell me, oh, well, you know, the aliens made me do it, literally, [43] paraphrasing, but that's what they said. Eric has never offered to me anything about the aliens. I mean, during both of my interviews he never mentioned them. It was only when I raised it and said, well, there is this mention by your mom and others. Well, yeah, yeah, I do kind of think that, you know, people are sometimes aliens. And I said, well – like you, well, you could be an alien, you know. It was only drawing this out that he said anything about it. Otherwise, he doesn't comment on it. And I think that argued that, you know, pretty strongly against any kind of malingering. And even when I did probe with him about his

beliefs regarding these aliens, he didn't elaborate a great deal, didn't go into much detail.

And one of the things that I think is occurring in our kind of current culture is people are much more educated about mental illness and mental diseases and what it means to be psychotic and schizophrenic. And he may well have been aware and more patients are aware of what people – when people label someone as psychotic from the media, from being educated. So they're a lot less – they're a lot more reluctant to share their symptoms, they want to hide them because they don't think anything is wrong with them. They don't think their thoughts are crazy, but they know that others [44] might think their thoughts are crazy, so they don't really want to talk about it. And I think that's been partly the case with Eric, he – he is really – doesn't think anything is wrong him and he doesn't like it when people talk – you know, sort of suggest that he has some kind of problem.

Q. And I'd kind of like to go back to your interview with Eric at the Arizona State Hospital. On at least one occasion I was present. And, at that time, Eric had already been found competent and I was present because Eric would not talk to you initially; is that correct?

A. Yes.

Q. And during our discussions with Eric, did I tell him repeatedly and did we both encourage him to talk because you could possibly help Eric in this legal setting, and he continued to refuse to talk?

A. Yes.

Q. Okay. The reason I bring that up is because I know the prosecutor has mentioned on – I think in asking

you questions that is it a factor that once Judge Coker determined Eric was competent, that suddenly he started talking, but as you've read all the evaluators's reports in this case, did Eric – has Eric ever volunteered information about aliens or anything like that?

[45] A. No.

Q. And did he apparent – did he ever appear to try and use this as an excuse in any way for any kind of his behaviors?

A. No. No. I mean, just before we, you know – when I was talking to him briefly before the hearing here, the trial here today, you know, he said, well, you know, and I know Bryon wanted – is doing this GEI thing, but I'm not guilty, you know, that's – and I said, well, but, you know, Bryon's your attorney. Well, yeah, I know he's my attorney. Well, I mean, how are you going to prove that you're not guilty? Well, you know, I don't know. You know, there was no logic to some of the things that he was saying, typical of schizophrenics.

Q. I'd like to talk a little bit about your understanding of how the shooting of this police officer occurred. What's your understanding of what happened?

A. Well, my understanding is that the family had gone to a movie on the evening in question, Shaft. They had gone out to dinner before that, I think to a Sizzler, which is a place that – one of the few places that Eric felt comfortable eating from. They went to the movie, then he wanted to stay and see another movie. And his parents said, well, all right. And they went home. And they – you know, he never – never came home by the time [46] they went to bed. And, apparently, during the night Eric had

taken his older brother's truck, Gentry's truck, and was driving around the neighborhood in circles, and he was driving around and around, it was like 3:00, 4:00 in the morning, and had the windows down and had the radio on, blaring, or tape in, a CD, and I don't know exactly what, and which is – which, you know, kind of is consistent with his behaviors up till then. He wasn't able to sleep very well at night, the turning things up loud, you know, as I'm speculating, to drown out voices while he was turning it up loud in the car, in the truck, and he's just sort of wandering around the neighborhood. And police, you know, are called because he's causing a disturbance and police stop him. And it's not clear exactly what happens, but he apparently shoots a policeman. And my understanding is that this probably happened very rapidly, you know, shortly after the police stopped him. There wasn't a whole lot of time to transpire between the stop and the shooting. And then Eric, you know, took off somewhere in the neighborhood, and 12 hours, I don't know, 18 hours later, was apprehended nearby in the neighborhood.

Q. Okay. Do you think based on, again, your training and experience as a psychiatrist, that Eric was in any way trying to – preparing or trying to create an [47] ambush to kill this police officer?

A. I can't imagine that.

Q. Why not?

A. Eric's behaviors were just – there wasn't much purpose or, you know, didn't seem there was much rhyme or reason to his behaviors. You know, he was continually a surprise to his parents. They didn't know what he was going to do next, which is what they were so concerned about and why they wanted him in the hospital, you know,

he wasn't functioning in school, you know, he really wasn't functioning at all.

To hypothesize that he was sort of planning, you know, kind of a scheme to lure police I think is a bit of a stretch. I have trouble imagining that.

Q. Was – there's evidence that Eric – you mentioned that Eric hid out or evaded the police for 12 some hours. Do you think that reflects Eric's ability to appreciate or to distinguish between what's real and what wasn't real?

A. I think that it reflected that Eric was afraid and had been afraid for months, had been very frightened, you know. He was frightened that the end of the world was going to come, frightened that aliens were taking over people, were manipulating people, that his own [48] parents might be aliens. He really had a tremendous amount of difficulty perceiving reality as you and I see it. And there is, you know, reference that he became kind of preoccupied by this movie, The Matrix, which I saw once and was a pretty bizarre movie, but basically had to do with, you know, government forces, police forces, you know, basically alien police forces somehow inhabiting people's bodies and so forth, and he kept saying to his mom that these were real. So Eric may have had some kind of particularly enhanced fears of the police or people in authority were somehow in, you know, particularly controlling positions with this sort of alien presence in the community of Flagstaff.

Q. Okay. The fact that Eric shot a police officer, does the identity of the victim in any manner play in your opinion as to whether Eric was insane at the time of the shooting?

A. No. I think that Eric may well have killed himself, killed one of his family members or killed a total stranger suddenly. You know, I think that he was at great risk of, you know, doing something in the very near future. And, unfortunately, he was not hospitalized in time.

Q. For example, there was evidence that in this – in this trial that Eric had threatened his [49] brother, to kill his brother, had threatened to kill a kid at a party that he had had a fight with. Is it those types of evidence that indicate to you that the fact that he actually shot a police officer is irrelevant really to the overall look at what was going on with Eric?

A. Yes. I mean, he had threatened his mother, he had a gun, he had talked about killing himself, he had been aggressive at one point with his girlfriend, I mean, there was – or former girlfriend. There were a variety of times that he acted unexpectedly.

Q. At some point in time, Eric, this year, said to the effect of, you know, I'm innocent, you know, I was up at Lake Powell. And I believe he told you that and I know he told Dr. Moran that. Does that reflect on Eric's ability to distinguish between right and wrong?

A. It I think reflects Eric's schizophrenia. I think it's a – probably a reflection of a very primitive form of denial, going back again to when he was arrested and some of his statements he made, and they are transcribed, he really seemed to not have any awareness of why he was there and kept talking about suicidal ideas, basically. And I think that it's plausible that he just blocked them – what happened with the police, he just blocked out of his consciousness. It's hard to know exactly what he remembers about that time period. It [50] would really be speculation

to try to conclude. But I don't – you know, I can't totally explain it, but I don't think that it's like, you know, that he's malingering, you know, when he makes those statements.

Q. You mentioned kind of his statements with the police. I'm going to put up here and just have you reflect on some of the things that he did say.

And, Judge, that's also in your notebook. It would be Exhibit Number 3.

THE COURT: 3?

MR. MIDDLEBROOK: Number 3.

THE COURT: Josh. Thank you, Josh.

Q. BY MR. MIDDLEBROOK: And as that projector warms up, I will lay the foundation a little bit for what we are about to see. This was a transcript of Eric when he was being held in an interview room at the police station shortly after he was arrested for this shooting.

A. Yes.

Q. Okay. There it is.

MR. POWELL: There you go. Put some more light on that.

Q. BY MR. MIDDLEBROOK: Very kind of top of that line, I believe that's about page – unfortunately, I didn't number the pages, Judge, so I apologize.

THE COURT: It's number five.

[51] Q. BY MR. MIDDLEBROOK: Page five, we see that I'm in there. And you watched the videotape of this, as well, didn't you?

A. Yes.

Q. Basically, me telling Eric that, you know, it's very serious stuff and he continually says, yeah, well, I don't – yeah, well, and then he's left alone, and then this is where we start – can you tell us what – as you recall from the videotape, what Eric's mannerisms are as we see where it says, Eric: Take me to heaven, that type of thing. We'll get into what was actually said there in a little bit.

A. On the videotape I had a great deal of difficulty actually hearing what he was saying. He was sort of sitting there kind of hunched over, sometimes looking around and mumbling. I mean, it was practically inaudible, you know. It was kind of a little bit of a singing, but it wasn't very loud, it wasn't very clear, you know. He wasn't sort of looking at anyone or anything. He was just sort of, you know, kind of – it seems like sort of mumbling, singing a little bit to himself but in a muted way.

Q. And no one's in this room?

A. Not that I could see.

Q. Okay. And I can tell you because I was there [52] that there is no visible video camera, no visible recording devices, anything like that. Okay?

A. So I trust that this probably was some reflection of what was going on in his mind at the time.

Q. And then as we see, and you can see where I've got two little arrows, but jumping down to the second little

arrow, kind of that area there that's highlighted, when you saw that and that's brought to your attention, you know, what was reflective of that to you as to what was going on in Eric's mind?

A. That he was very disturbed, that he was frightened, that he just wanted it all over with, that's what it reflected to me.

Q. For example, one of the statements: Are you sure you want to follow me, God? You've got to stay true to your school. I will go down for yours if you go down for mine, and just kind of rambling?

A. Right. Some of it, it doesn't make any sense.

Q. And on the next page we can see where the two arrows are: From the start, I got a problem with you all so why do you all I – or I ain't got a problem with you all so why do you all have a problem with me? I mean, poison me, what the fuck does that do? Ah, just want to leave my life. I just want to, um, take me away. I want to go away. Take me home. I want to go away. Take me [53] home.

And he's just kind of singing that to himself and just rambling on?

A. Yes. And I think these are the same kind of statements that he had made to his mom when we would sort of rush over to her at where she was working and, you know, say, I just want this over with. I want to go to heaven, you know, statements like that, but that were very frightening to her.

Q. I've got one more thing I've got to do with the projector. You can turn the lights back on now.

THE BAILIFF: Okay.

Q. BY MR. MIDDLEBROOK: To be fair here, Judge, (sic) when you were looking as to whether Eric was insane at the time of this shooting, you were never able to develop any information as to what was actually going through Eric's mind?

A. No. It's my understanding that, you know, he really never describes that to anyone at any time or even hinted or, you know, made inferred references to it during the entire time he was in the hospital.

Q. And I think one of your references is up to detention officers to nurses to other inmates, anything like that to our knowledge he's never mentioned anything about what's happened?

[54] A. No.

Q. Is that reflective on whether you think Eric can perceive the difference between what was real and what wasn't real?

A. I think it just adds further support that he – you know, whatever he was thinking at that time, no one's probably ever going to know, he probably doesn't know, and it may be just gone at this point.

Q. I'd like to turn your attention to Dr. Moran's report. You've reviewed it – had the opportunity to review Dr. Moran's report?

A. Yes.

Q. Within his report he comments to the effect that around the time that Terry and Dave left Eric at Harkin's Theater, that Eric more or less looked normal to them, and

he uses that as part of the criteria in saying that in later concluding that because of that, Eric must have been functioning at a higher level function. Is the fact that Eric may have looked normal – and Terry and Dave kind of explained to us what normal for Eric was – but the fact that he may not have looked agitated, he wasn't ranting and raving, is that an indicator, a reliable indicator as to whether Eric would act violently in the next 12 hours?

A. No, not at all.

[55] Q. And why not?

A. Well, I mean, I think there's abundant evidence in the weeks and months leading up to this that Eric was very disturbed, was very psychotic, and there's no reason to think that while he was at this movie that these symptoms had disappeared. The fact that he wasn't shouting expletives, you know, at strangers in the theater or at the restaurant does not mean that he was not still believing that people were aliens, that people were trying to poison him, and that very strange and malevolent things were transpiring around him. No reason at all to think that. In fact, I think there's a lot of reason to think that all those beliefs were still very much present, still affecting his behavior, and probably had a major impact and influence in a major way on what he did when he killed the policeman.

Q. Dr. Moran also relies on a global assessment functioning scale as part of his conclusion that Eric, because of the level of function that Dr. Moran puts him at, that Eric would not have perceived what he was doing was wrong. First of all, I'd like to talk about this global assessment and functioning scale. What is that and how is it used by mental health professionals?

A. In the diagnostic and statistical manual, the DSM-IV, there – when you diagnose people you use five [56] axes, and I won't go into all those axes. At the bottom, though, is Axis V, which is the global assessment of functioning scale score, and that goes from zero to a hundred. And, primarily, that reflects in a very rough way someone's overall functioning at that point in time or, you know, over the past year.

Q. Is it used to determine the level or the severity of a delusion?

A. No.

MR. MIDDLEBROOK: Judge Coker, this particular scale is also included in Dr. Moran's report, so you'll see it there, I'm certain, when Dr. Moran testifies, as well.

Q. BY MR. MIDDLEBROOK: But, Dr. Morenz, I have kind of focused on it below a hundred, but only because I can't get it up there on the whole thing, but Dr. Moran said that Eric was functioning at about a 31.

A. He places global assessment of functioning scale of Eric at about 31 at the time of the shooting.

Q. First of all, what – assuming that that – I mean, that is his conclusion, what is significant about that as far as the 31 figure as it relates to generally patients that are being admitted or discharged from a mental health facility?

A. Well, that's pretty low function.

[57] Q. Okay.

A. That would be considered someone who is having serious problems.

Q. All right. And then assuming the 31 to 40 is an accurate assessment, what – as we read across there, what is significant about that scale as we look there?

A. Well, you have impairment in reality testing. This person is psychotic to some degree or they have major impairment in several areas, such as work, school, family relations, judgments, thinking or movement. He had both. And he didn't have some impairment, he had major impairment. And I think he had some major impairment in reality testing, so –

Q. And when you're looking at assessing or making a global assessment functioning score, do you continue to move down the scale until the lowest indicator or what's prevalent there is present?

A. Yes.

Q. Okay. Or the impairment is present?

A. Yes.

Q. So if we look at the 31 to 40 range, what do we see there as indicators? And, first of all, in using this scale, is there basically two components to it, functioning being one of them and the other behavior?

A. Well, yeah. They – I mean, they kind of [58] overlap with one another. But, yes, it means functioning and behavior.

Q. And that's kind of the overall and that's why we call it the global assessment functioning, is to really use it as a guideline to determine what the level of individual's functioning is?

A. Yes. And, again, it's a very rough guide.

Q. Okay. If we look at the lower levels as we – in the 21 to 30 range, is there anything significant about that as it would relate to Eric on June the 20th or 21st?

A. Well, I – I think that his behavior was considerably influenced by delusions, you know, all the hanging of the strings, the not showering at home, the not eating at home, all that is being influenced by delusional beliefs. Ah, I think that he. was unable to function in many areas of his life, so I think that fits, as well. And I think that, you know, even at the lower 11, 11 to 26, I certainly – you know, if I had examined him, had a chance to talk to his mom about all that had been transpiring, I would have considerable concern that there was some danger of him hurting himself or others, you know, in those weeks leading up to his arrest.

Q. Okay. And is that evidenced, for example, by just several days prior to the shooting that – is that [59] evidenced by just several days prior to the shooting that Eric had broke the nose of a kid and the kids testified, said that, you know, basically it was over a trivial comment of something that Eric had changed?

A. Yes.

Q. Dr. Morenz, I know you've reviewed many documents, you've talked to Terry, you've looked at photos of Eric's room, things like that. At the time of the shooting, based on your training and experience, could Eric distinguish between what was real and what wasn't real?

A. As we've already talked about, I mean, no one knows exactly what was on Eric's mind, but given how psychotic he was before and immediately after and everything we know about schizophrenia, I think that it is fair

and probable that he did not understand what he was doing was, you know – that they did not understand right from wrong.

Q. And thereby you believe he was insane at the time of this shooting?

A. I believe he was insane as under Arizona law.

Q. Thank you, Doctor. That's all the questions I have for you right now.

THE COURT: Thank you, counsel.

Ladies and gentlemen, we'll take our [60] morning break at this time for about five minutes. Thank you very much. We stand adjourned.

(Whereupon, a recess was had from 10:32 a.m. to 10:50 a.m.)

THE COURT: Let the record reflect the presence of the parties.

Counsel, you may begin your cross-examination.

MR. POWELL: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. POWELL:

Q. Doctor, good morning.

A. Good morning.

Q. I'm going to make good faith efforts to not ask you questions that you've already answered. There will be

sometimes where I have to set that – to kind of set the stage for a series of questions. So if I ask repetitive questions, that's the reason I'm doing that. I wrote down, I believe, your definition of insanity, your understanding of the Arizona definition of insanity, and I tried to put it up here on the easel. And I hope over the break you had a chance to look at that. Does that fairly reflect the statement of your understanding of the law of insanity in Arizona?

A. Yes.

[61] Q. And it's a two-stage or two-prong test. Would you agree with that?

A. Yes.

Q. And let me tell you, the state has not and does not intend to challenge the fact that the defendant suffers from a mental illness or a mental defect, and that it's most likely schizophrenia paranoid type. So we're not even really going to talk to you much about that. There may be an occasional question along the way. Okay?

A. Okay.

Q. What I'd like to talk about is your evaluation that you performed, your report and your testimony today. You told Mr. Middlebrook that I think you said you agree, schizophrenia alone does not equal insanity; is that correct?

A. That is correct.

Q. And that would be because that only satisfies the first step of the definition of insanity. It doesn't satisfy the second step. Correct?

A. Correct.

Q. And would it be proper for us to refer to psychosis as opposed to schizophrenia? I know they're not one in the same, but to generalize, could we do that today?

[62] A. I don't think that would be accurate.

Q. Okay. What I will do is stay with schizophrenia.

A. Yes.

Q. Now, there's been some mention of the DSM-IV-TR. Correct?

A. Correct.

Q. And you explained that to us. And in your report you referred to it. Correct?

A. Yes, I believe so. Let me see.

Q. And we'll get into that in a bit. Is it something that's relied upon by professionals in your area of expertise?

A. Its relied upon for diagnoses, yes.

Q. Do you know any mental health experts that do not use the DSM-IV?

A. I do not.

Q. So it's generally used?

A. It's pretty generally accepted, not loved but accepted.

Q. And, again, could you just give us a quick explanation of what the DSM-IV provides?

A. The DSM-IV is a listing of all the psychiatric diagnoses that are commonly accepted in the field with criteria for each of those diagnoses.

[63] Q. And sometimes you have to find two, sometimes you have to find three, sometimes one alone of the symptoms will satisfy the diagnoses?

A. Yes. It's a bit of a Chinese menu approach to diagnoses.

Q. Let's talk about how you reached your conclusion please. You did meet with the defendant, did you not?

A. Yes.

Q. And how many times have you met with him?

A. Oh, well, I have met with him, I guess, well, four times, including today.

Q. Now, in your report you mentioned two times. When was the third?

A. Well, it was another time when I was really wrestling with the issue of his competence to stand trial that I went up and tried to visit him. You know, he wouldn't talk so, you know, efforts were made to communicate, but there was really very little meaningful communication.

Q. Was that before the two that you refer to in your report?

A. Yes.

Q. And would you say it was productive at all?

A. Well, it was productive because I got to meet [64] him, I got to see how he behaved, how he responded to efforts to get him to talk, so there was some usefulness to it, absolutely.

Q. Did he provide you any information at that time, though?

A. No, not – no. No. He said very little.

Q. And the first time you refer in your report, I believe you say your meeting lasted an hour-and-a-half, approximately?

A. Yes.

Q. And Mr. Middlebrook was there – was present?

A. Yes.

Q. And, again, the defendant did not cooperate with you there, did he?

A. No.

Q. So would you consider that a nonproductive meeting?

A. Again, it was – it was productive because it was another instance of seeing him, seeing how he is responding to questions, seeing his appearance, so not as productive as I would have liked, but not – not totally useless either.

Q. Again, he provided no information during this meeting?

A. Some, but not very much.

[65] Q. And then you had the second, you referred to in your report the third overall meeting, and it was another hour-and-a-half. Correct?

A. Yes.

Q. And was Mr. Middlebrook present?

A. No.

Q. And – but he and the defendant's mother had somehow convinced the defendant to speak with you?

A. I think it was probably mostly his mother.

Q. And when you met him on this occasion, it was just the two of you for the hour-and-a-half?

A. Yes.

Q. That was not tape recorded, was it?

A. No, it was not.

Q. And it was at this time that the defendant denied any involvement in the murder of Officer Moritz?

A. Yes.

Q. This is where we will be referring to a Sarah story first arose, as far as you know?

A. Yes. I mean, I hadn't heard it before.

Q. That's what I'm talking about is you, your knowledge.

A. Yes.

Q. Now, you rejected that version of the facts outright, did you not?

[66] A. Yes.

Q. Please let the Court know what the defendant told you about his activities on the day of the murder, the evening before and the day of the murder.

A. Ah, that he had gone to the movies with his parents, as I have already stated, and then stayed, met this girl named Sarah, and they took a bus or they drove to Lake Powell, spent some time there and came back. And that basically was his story.

Q. He also told you when they returned almost immediately he was arrested by the police?

A. Shortly thereafter he was arrested, yes.

Q. That he was just walking down the street, the police said, freeze, you're under arrest. He stopped. He didn't tell you about a chase or anything like that. He just stopped and was arrested?

A. I don't think he went into detail about the arrest.

Q. And you say you rejected this outright. Why did you do so?

A. Well, you know, I – my understanding is the evidence was pretty clear that Mr. Clark had taken Gentry's truck and shot a police officer.

Q. And you attributed the story to several different sources or reasons, and one was confabulation. [67] It could have been confabulation?

A. Yes.

Q. Please explain what that means.

A. That Mr. Clark had no memory for the time and filled it in with this very implausible story, so sort of filled in the gap in his memory with this – with Sarah's story.

Q. The other possibility was fear. Correct?

A. Yes.

Q. And fear of what?

A. Some kind of delusional fear; fear from, you know, the aliens, his delusional beliefs, and perhaps more reality based fears regarding retribution, the courts.

Q. And if that was the reason why, he would basically just be lying?

A. Yes.

Q. So that's a possibility?

A. Yes, it is a possibility.

Q. He also told you during this interview that in the months leading up to the murder he smoked marijuana most evenings?

A. Yes.

Q. At a school?

A. Yes, somewhere near his house.

[68] Q. And he drank on the weekends?

A. Yes.

Q. And that he would get drunk but his parents would not notice that?

A. Yes.

Q. And when he told you this about his drinking and his drugging with marijuana, did you consider that true?

A. Not – I was not completely sure. I certainly believed that he was drinking and using marijuana. The extent of his use was a question mark in my mind. That was unclear because of some of the statements his mom had made to me. You know, I certainly thought at times he may have become intoxicated on alcohol and used marijuana, but I wasn't totally convinced that it was quite as frequent as he describes, especially in the weeks leading up to the offense.

Q. And that was based upon statements of the mother?

A. The statements of the mother that she spent, you know – he spent, you know, 95 percent of his time with her, and he would – almost never left, you know, her presence, so that's what made it, you know, a little bit questionable. It's still possible, he could have gone out at night when they were sleeping. He didn't [69] sleep well at night. So it's just kind of a little bit of an unknown.

Q. You never satisfactorily resolved it in your mind how much he was using beforehand?

A. No. I mean, I think its, you know – he was using, but the extent of his use is what's unclear in my mind.

Q. Let me interject something here. You're a clinician and forensic doctor. And if – if you could just very briefly tell us the distinction between those two.

A. I'm a fully trained psychiatrist who, the forensic part, the forensic psychiatry part is, I use my psychological and psychiatric knowledge to help assist in the resolution

of legal questions, such as, you know, a question of whether someone is suffering from a mental disease at the time an act was committed and, you know, what their thinking was at that time.

Q. Now, as a clinician you're going to evaluate patients. Correct?

A. Yes.

Q. And these patients usually come to you requesting assistance. Would that be correct?

A. Yes.

Q. And, at that point in time, you're going to [70] believe what they tell you generally, aren't you?

A. Well, yes, to some degree, it depends on the patient and it depends on how disturbed they are. Often, we have questions about the reliability of the histories and statements, but we want to kind of talk to family and friends about that, so, yes, to a point.

Q. We're not saying this is black and white, but what I'm going to do is compare that to people you interview in a forensic setting. Wouldn't it be fair to say that if you're interviewing an individual charged with a serious crime, you're going to take the statements they make to you with a much larger grain of salt than when you're acting in a clinical manner?

A. Yes. And, certainly, in a forensic setting you're always going to want to carefully look for evidence of malingering, and it will be crucial to review a lot of collateral information to make, you know, certain that

statements that are being made to you by a defendant are consistent with other statements.

Q. But, eventually, in either setting, you're going to have to resolve in your own mind whether or not the person is telling you the truth?

A. Well, in a clinical setting it's not always that important ultimately whether someone's telling you the partial truth or a whole truth. I mean, you [71] certainly want to get enough information so that you can proceed to make some kind of reasonable diagnosis and begin some kind of treatment. But, you know, in a clinical setting, we're there to help someone. The issue is not whether they're telling the truth or not.

Q. So, therefore, it's more important to make those determinations in a forensic setting?

A. In a forensic setting it – certainly, the accuracy of statements becomes much more important.

Q. He told you in – and, again, we're still at the third meeting, I think. The defendant told you that leading up a few days or weeks beforehand, before the murder, that he had gone to a couple parties and gone to a dance. Do you recall that?

A. Yes.

Q. Now, did you consider that true?

A. Um, getting kind of an exact time of when those parties occurred, I mean, I knew there was one party that was clear, corroborating evidence of that. He mentioned the dance and another party. It just was a little less certain when those occurred or, you know, if they had been

many months ago as opposed to two or three months before – before the incident.

Q. But did you believe the fact that he had gone to a couple of parties and a dance at some time?

[72] A. I thought that was probably true, given what I knew, that he had, and probably more than that.

Q. Now, he denied use of LSD and other drugs. Did you accept that as true?

A. Well, I knew he had been found with a fair amount of LSD at one point. I also knew that the vast majority of the witnesses that gave statements had not seen him use any other drugs. So I guess I would say my – my working hypothesis was, he probably did not use very much LSD. He might have tried it a couple of times. I'm not sure.

Q. But in light of the fact that when he was arrested two months before the murder, he had 42 tabs of LSD, that was certainly factored in?

A. Yes. That's what I was referring to, yes.

Q. You certainly know that 42 tabs of LSD is a large amount of LSD?

A. Yes.

Q. He also told you that his family was his – or were his best friends?

A. Yes.

Q. He also told you his parents may be aliens?

A. Yes.

Q. But, in spite of that, they were still his best friends?

[73] A. That kind of conflictual sort of logic is – you can see that very common with schizophrenics, you know, where two seemingly opposing, you know, opposite sorts of things can – can be present in the person's mind but its part of their whole irrationality.

Q. He never disputed that his family were his best friends, though?

A. No. I didn't, you know, kind of ask him and say, well, yeah, but you said they were aliens.

Q. He denied hallucinations, mind control or telepathic communication. Correct?

A. That's correct.

Q. And did you accept that as truthful?

A. Um, not completely, because he did – he did refer to these kind of special communications that he was receiving; the signs, the license plates. And then, later, in Moran's report, he apparently told Dr. Moran that the TV and now the radio was communicating with him. So my suspicion was that he – he was. And it does seem that he was experiencing some external forces that were communicating with him and might have been influencing his behaviors.

Q. Now, you also talked with the defendant's mother, Terry Clark?

A. Yes.

[74] Q. And, actually, you had a longer meeting with her than you had with the defendant, didn't you?

A. Yes.

Q. Her meeting was two hours long?

A. Yes.

Q. And it was a productive meeting?

A. Yes.

Q. She's a rather loquacious woman, isn't she?

A. She was very helpful with the story historically.

Q. And she provided information to you about her son, the defendant?

A. She provided a lot of, yes, very painful information about her son.

Q. And you seriously considered the information she provided?

A. Yes, I did. I thought that she was a very important source of information about his behavior over the years leading up to this instance.

Q. And one of the items she told you was that the defendant was found one night sleeping with a gun pointed towards his head, didn't she?

A. Um, you know, I am not completely sure whether she said that or I read that into it, but it's been clarified that he was found with a gun. It wasn't [75] pointing at his head. So somehow that got distorted along the line.

Q. Your report on page six does refer that she discovered her son asleep with a handgun pointed at his head?

A. Yes.

Q. She also told you she was unable to obtain psychiatric help for the defendant, didn't she?

A. Yes. She didn't completely fail. They did get him into Aspen Hills (sic) Hospital with the assistance of police on one occasion, but she wasn't able subsequent to that to get any psychiatric help.

Q. She told you that the defendant was removed after three days in Aspen Hill – Aspen Hills against medical advice?

A. Yes.

Q. Defendant never told you or defined what an alien was, did he?

A. No.

Q. He never referred to the police as aliens?

A. No.

Q. In your report on page four – and I don't know if you have a copy.

A. Yep.

Q. On page four, under the paragraph labeled, [76] "Psychiatric History" –

A. Yes.

Q. – towards the bottom you have a statement about the defendant screaming in jail on 6-23-00 –

THE COURT: Excuse me, counsel, hold on just a second. Let me catch up to you. Which one was that in the defendant's exhibits?

MR. MIDDLEBROOK: 5A, Judge.

THE COURT: 5A. Thank you. And what page are you on, counsel?

MR. POWELL: Page four, Judge.

THE COURT: Thank you. And the –

MR. POWELL: And the heading is, "Psychiatric History," and we're going to go down to just the last couple of lines on there.

THE WITNESS: Yes.

Q. BY MR. POWELL: The defendant was in Coconino County Jail on 6-23-00. He stated: Fuck you. You're all fucking aliens. Correct?

A. Yes.

Q. And that was gathered from some of the documentation you had reviewed that had been provided to you by the parties?

A. Yes.

Q. And page 1656 through 8, that's not all he [77] told the jailers, was it?

A. No. He said other things. I don't recall offhand.

Q. Let me ask you and then I'll hand this to you. They came – the jailers basically came to take him to medical, correct, if you remember?

A. Yes. Something like that, yes.

Q. And he didn't want to go. And his first comments to them, not that they were aliens, was: Fuck you, you fucking dumb ass. You can't touch me.

Do you recall that being in the report?

A. Not exactly, but he was obviously hostile.

Q. I will hand this to you in a moment. And he was getting on the phone. There was a phone present. He was getting on the phone, calling his mother, and the – one of the jailers tried to take the phone away from him and the defendant took a swing at him. Do you recall that?

A. Um, not exactly. But, again, I knew he was very hostile.

Q. And then he said, fuck you, punk. Fuck all of you, you fucking aliens.

So prior to referring to these people as aliens, he calls them a fucking dumb ass and a fucking punk. Correct?

[78] A. Yes.

Q. And would you like to look at the report just to –

A. I trust you read it correctly.

Q. And that part was not reflected in your report, those other statements?

A. Yes.

Q. An area that was touched on briefly, you said that drugs and alcohol can exacerbate existing psychosis?

A. Yes.

Q. Particularly in schizophrenic individuals?

A. Um, not necessarily particularly. In any person that's having major mental problems, drugs and alcohol usually make it worse.

Q. If there is a latent or a dormant psychosis, can it enable it to come forward?

A. Um, yes. I would say that probably is the case, yes.

Q. An illness would not come forward without the benefit of the drugs and alcohol?

A. Well, I'm not so sure I'd agree with you there. Its sort of like someone who is vulnerable, is on the verge of, and uses drugs, you know, it's sort of – sort of gives a little push to the snowball as it goes down the hill.

[79] Q. And the defendant told you that he had been using marijuana and alcohol since 8th or 9th grade, didn't he?

A. Yes.

Q. Would it be possible this alcohol and drug use could have exacerbated his psychosis?

A. I think it probably did.

Q. Stressors can also exacerbate a condition. Correct?

A. Yes.

Q. And would you consider being arrested a potential stressor?

A. Yes.

Q. Being incarcerated in a jail or a mental facility?

A. Yes.

Q. Being charged with first degree murder?

A. Sure.

Q. Back to the DSM, I'm referring to IV-TR when I say DSM, there are five axes there with regards to diagnosis of mental illness, as you told us. You talked about just the fifth on direct examination. And what I'd like to do is ask you, these are all, including the fifth, are generally accepted in the mental community, are they not?

[80] A. Yes.

Q. And that's the GAF scale?

A. Yes.

Q. Now, in your evaluation you referred to I, II and III, do you recall that?

A. Yes.

Q. And that's on page six of your report, Axis I, paranoid schizophrenia, history of marijuana and alcohol abuse; Axis II, no diagnoses; Axis III, no diagnoses.

Please explain your evaluation of Axis II.

A. Well, Axis II is for coding personality disorders and things like mental retardation, and I did not believe that he warranted those diagnoses. And Axis III is for coding medical problems that may be causing the problems on Axis I.

Q. And you didn't think that was necessary?

A. No.

Q. You didn't think he had any personality disorders pre-existing his schizophrenia?

A. No.

Q. No oppositional defiance or anything like that?

A. No.

Q. And why did you not refer to Axis IV and Axis V?

[81] A. Well, Axis IV is the psychosocial stressors in a person's life. And, as you've already indicated, Axis V was the GAF scale. And they're just very rough guides that I didn't believe were very helpful here, so that's why I didn't use them.

Q. Let me ask you this: On Axis IV why would stressors evaluation not be helpful?

A. Um, well, I guess I kind of laid out in my report pretty clearly, you know, what all the kinds of factors and problems that he had had. And, you know, I could have said psychosocial stressors, you know, accused of first degree murder, you know, in the state hospital for three years, you know, things like that, but it's sort of very rough. I mean, I'm kind of repeating the obvious. And the global assessment of functioning scale score, as I said, is just a very rough guide.

It's kind of obvious from the report in my description that his function was very poor. You know, the GAF scale gives numbers, you know, which are sometimes problematic because the numbers may provide a false sense of precision that really doesn't exist. We have no special technology, you know, that can really clearly discriminate

whether someone warranted a 22 or a 24 on the GAF scale. But as I have already talked about with Mr. Middlebrook, clearly he was in the more severe, [82] you know, compromised functioning scale, the lower end of the scale.

Q. Now, you say it's a rough estimate. Again, its generally accepted in your field?

A. Yes.

Q. GAF evaluations – well, let me ask you this: Do you ever work with sexually violent predators?

A. Yes.

Q. When you do an evaluation of them, do you do a GAF evaluation?

A. No.

Q. Did you perform any types of tests on the defendant?

A. No.

Q. Do you believe there are some tests that are generally accepted in your area of expertise that could have been performed?

A. Yes.

Q. And you did not perform any of those?

A. No.

Q. You mentioned something that makes me think that you have heard about what had been referred to as Aaron's story. Are you familiar with Aaron's story?

A. Yes.

Q. When were you made familiar with that?

[83] A. Um, yesterday.

Q. When did you interview Mrs. Clark?

A. June 19th of 2003.

Q. How – who did you learn Aaron's story from?

A. Um, Mrs. Clark had provided me with one review of her kind of history of all of his symptoms and problems, and then she had written another one that she had provided to Mr. Middlebrook, which I was provided yesterday, which included descriptions of Aaron's story.

Q. How many pages is that second one?

A. Um, it's about 20. 19.

MR. MIDDLEBROOK: 19.

Q. BY MR. POWELL: And in there could you go and see the date that Aaron's story took place? You may want to look around August, 2000.

A. Yes, 8-20-2000.

Q. 8-20-2000. And you were first made aware of that yesterday?

A. Yes.

Q. And when Mrs. Clark met with you on June 19th of this year, she was – again, she was very helpful in providing information?

A. Yes.

Q. Did she appear to be trying to provide information to assist her son?

[84] A. Well, you know, she obviously wanted to help her son in any way that she could, but she was answering my questions and I think trying to explain her son, as well as understand her son herself.

Q. Let's move back to your report and page seven, conclusions. And we have one paragraph here under conclusions. And, basically, the first half, maybe the first two-thirds, you explain chronically psychotic as a result of the schizophrenia since approximately sophomore year in high school. Correct?

A. Yes.

Q. And then you explain that in the next few sentences?

A. Yes.

Q. I'd like to go down to the last few sentences here, beginning with: It is not known. If you can find that. Its right about the middle two-thirds down.

A. Yes.

Q. And in there you have: It is not known what Mr. Clark was thinking or perceiving at the time of the alleged offense. Correct?

A. Yes.

Q. But given that he was very psychotic before and after the alleged offense, it is reasonable to infer – and that's your word, infer?

[85] A. Yes, it is.

Q. – that his perceptions of what was transpiring at the time of the alleged offense was probably bizarre and a distortion of reality.

And you continue on: Thus, there is considerable evidence that indicates Mr. Clark probably did not know his acts were wrong at the time of the alleged offense.

Is that still your conclusion?

A. Yes.

MR. POWELL: If I could have just a moment, your Honor.

THE COURT: Certainly.

Q. BY MR. POWELL: What I have written up here is the word "refer," the phrase "probably bizarre," and "probably did not know acts wrong," and that's a paraphrase right there. That is – does that summarize your conclusions?

A. Yes.

Q. During our interview – I did have an opportunity to interview you. That took place on July 3rd of this year at your office?

A. Yes.

Q. And Mr. Middlebrook was present?

A. Yes.

[86] Q. Detective Garcia and myself, and we had a court reporter there?

A. Yes.

Q. And during that interview I asked you the question and you responded that you couldn't say conclusively defendant did not know what he was doing was right or wrong. Do you recall that?

A. Yes.

Q. I can show it to you if you need to.

A. No. I can't say with a hundred percent certainty. I don't think anyone can.

Q. I asked you: Can you affirmatively say – and this is page 61, right at the top – can you affirmatively say at this time that the defendant did not know what he was doing was wrong when he killed that police officer?

And you responded: I cannot conclusively say that. I think there is a lot of indicators that that probably was what happened, but I don't know exactly what he was thinking.

And you stand by that?

A. That's correct.

Q. Now, let's go back to your report. Your report is six – seven pages. Correct?

A. Yes.

[87] Q. No where in there do you really discuss the events of the early morning hours of June 21st of 2000, do you?

A. No.

Q. Was that an intentional omission on your part?

A. You mean this is regarding his statements like that we have talked about, this was when he was arrested?

Q. No. Actually, I'm talking about the time that he killed the officer.

A. Oh. I'm sorry. I didn't hear you correctly. I'm sorry. Repeat question.

Q. Yeah. I apologize. I asked you: There's no mention or discussion of the events of the early morning hours of June 21st. And, as we know, Officer Moritz was killed about 4:50 a.m. on the 21st. Did you anywhere address that in your report?

A. Oh, no.

Q. And then my next question is, was that an intentional omission on your part?

A. Um, what I was – I mean, I don't usually include the police description of what occurred, I mean, because that's available in police reports. What I'm interested in is the defendant's perceptions and that's what I include. That's what I was focused on.

MR. POWELL: Excuse me, your Honor. I [88] just have to get another pad.

THE COURT: Certainly.

Q. BY MR. POWELL: Did you consider the events surrounding the murder of the officer in reaching your conclusion, the physical events that happened?

A. Oh, yes. I went over those fairly closely. I went out to the – you know, before trial today, I went out to the

crime scene last night just to – so I could get a sense of, you know, exactly where things were and, you know, kind of what – you know, where things were located so I had a better idea of the neighborhood and the situation.

Q. And that was done last night?

A. Yes.

Q. I'd like to go through some things and ask you about them, evidence we've had presented in court over the last couple of weeks.

You are aware that the defendant – there's been testimony that the defendant, weeks before the murder of Officer Moritz, went to Thorpe Park and told some individuals that he was going to lure a police officer to him by firing a .22 into the air. When a police officer arrived and exited his car, he was going to shoot and kill him with a .22.

Was that factored in your conclusion?

[89] A. Yes.

Q. Now, you know that he was with his parents beforehand, and they have commented on his demeanor at the time; they basically said he was normal. You understand that?

A. Well, that's what they said, but he was not normal in any way.

Q. That's what his parents said, though?

A. Well, I think his parents were talking about that his behavior wasn't particularly problematic at that moment in time. Like I said earlier, he wasn't shouting

expletives or his behavior wasn't, you know, out of control, he wasn't jumping to the floor or, you know, doing other odd things, so he was kind of not a problem at that moment in time.

Q. Okay. Now, you earlier told us you couldn't tell us what was in the mind of the defendant, so you certainly can't tell what was in the minds of his parents either, can you?

A. That's correct.

Q. And we also had a witness who saw the defendant at the Sizzler restaurant an hour or so before – maybe two hours before they left for the theater, and he was acting – said he acted normal. Did you factor that into your conclusion?

[90] A. Yes.

Q. You understand that there was never a mention of a handgun that the parents, this person at Sizzler, no one said that he had a handgun that they could see on him?

A. Um, I don't recall that, but it's my understanding he didn't at that point.

Q. So he would have had to have obtained the gun afterwards?

A. I guess. I don't know. I mean, that part I'm not sure about.

Q. But there was no mention of anyone seeing a weapon before the killing of the officer?

A. I don't recall any mention of that, no.

Q. Excuse me. Now, we know at some point in time the defendant had to travel to his home, he had to enter the home, he had to enter his brother's room and he had to obtain his brother's keys from either a desk or a dresser inside that room. We understand that. Do you agree with that?

A. Yes.

Q. And did you factor that into your conclusion, those facts?

A. Yes.

Q. Then he went to the brother's truck and began [91] driving around in a quiet neighborhood between 4:00 a.m. and about 4:50 a.m. That's your understanding?

A. Yes.

Q. And he was playing his stereo very loudly, which was waking up police (sic) and generating 911 calls. You understand that?

A. Yes.

Q. You understand that he drove in one route at least 22 times, a minimum of 22 times?

A. Yes.

Q. And because the neighbor was actually counting as he drove on by?

A. That's my understanding.

Q. Just to interject something here, if an individual wanted a police officer to come to him because he had

plans, could you imagine a much more provocative behavior than what we have just described?

A. I can imagine all kinds of provocative behaviors.

Q. Could you – would you agree that this could very well be defined as provocative behavior, if the person's intent is to lure a police officer to him?

A. Sure.

Q. We know that Officer Moritz responded, had his overhead lights on, we've heard the radio dispatch which [92] has times on it, we know he had his overhead lights on, he made a statement to dispatch, I've got one running on me, and then 50 seconds later we know he said, basically, he stopped, I'm going to be out with him, and he radioed in the license plates of the truck. We also know from seeing witnesses that the officer had to illuminate his overhead lights – or I'm sorry – to use his siren for several seconds, I believe. You understood that to be true?

A. Yes.

Q. You did know that the defendant, when he did pull off, pulled off just a half block, I think it's been described, from his home?

A. It was very close.

Q. And, again, let's go back. He did say his parents were his best friends. Correct?

A. At one point, yes.

Q. Are you aware that when he was stopped, he was going south on Gillenwater, and if he would have continued in that direction, he would have basically run right into his own home?

A. Ah, I think you had to turn a little bit.

Q. Very short?

A. So, not quite, but he was very near his home.

Q. And headed in the right direction?

[93] A. Yes.

Q. We know the defendant at some time exited the vehicle. Correct?

A. Yes.

Q. And, at some point, the police officer exited his vehicle. And we know that the defendant shot the police officer and killed him. You know all that?

A. Yes.

Q. We know the defendant fled, successfully concealed himself from the police from about 4:50 a.m. to about 9:30 p.m., a period of about 16-and-a-half hours; we know that?

A. Yes.

Q. You understand this is one of the most intensive manhunts in Northern Arizona history because it was all confined to a special confined area?

A. Yes.

Q. Yet, the defendant was able to avoid detection for 16-and-a-half hours?

A. He did, yes.

Q. You considered that in your conclusion?

A. Yes.

Q. You know the defendant attempted to conceal the murder weapon?

A. Um, by putting it in a hat and throwing it [94] away somewhere or dropping it.

Q. Yeah, putting it against a shed. We have photographs of it. We all know what happened. But you're aware that he tried to conceal it, put it somewhere?

A. He put it somewhere, yes. I'm not sure what he did with it.

Q. And you're aware a minute or two before his arrest, that he was outside – seen outside of his own home; you're aware of that?

A. Yes.

Q. And that he ran from the police?

A. Yes.

Q. And he didn't stop until he was confronted by two armed detectives; you're aware of that?

A. Yes. Something like that, yes.

Q. And you considered that?

A. Yes, I did.

Q. But in your report there is no mention of any of that, anything we just discussed?

A. No. Like I said, I don't usually put a recitation of the police reports.

Q. Going back to the definition of insanity, we have met number one.

Number two, such severity that the [95] defendant did not know his act was wrong.

Don't you think it's very fair and necessary to consider what happened around the time of the crime and at the time of the crime to see whether it satisfies the second prong?

A. Yes. Of course.

Q. But you did not address that in any manner in your report?

A. I did not put it in my report, that's correct.

Q. Sir, I'm going to hand you a copy of the DSM-IV, unless you have one there.

A. No, I don't.

MR. MIDDLEBROOK: He can have my copy.

MR. POWELL: I copied this straight off.

Q. BY MR. POWELL: And it's open to page Roman numeral XXXII. If you could take that please. And I'm going to hand a copy to the Court and counsel also.

THE COURT: Counsel, is this going to take very long? If it is, I will take a lunch break. If it's going to take just a couple minutes, I will continue.

MR. POWELL: We could take lunch break.

THE COURT: Ladies and gentlemen, we'll take our lunch break right now. We will reconvene at 1:30. Thank you.

MR. POWELL: Your Honor, may I ask one [96] thing on the record? Since the witness is testifying, could I ask that he not consult with any of the attorneys over the lunch break or that we be allowed to be present, also?

THE COURT: If there's going to be consultation, I think both attorneys should be present. Okay?

Thank you, Doctor.

THE WITNESS: Yes.

(Whereupon, lunch recess was had from 11:45 a.m. to 1:33 p.m.)

THE COURT: Let the record reflect the presence of the parties.

Counsel, you may continue your cross-examination.

MR. POWELL: Thank you, your Honor.

Q. BY MR. POWELL: Good afternoon, Doctor.

A. Good afternoon.

Q. Before we go into the area I was going to begin with in the morning, I'd like to pick up some other little things here. There were – there were comments and testimony this morning about suicidal thoughts of the defendant, and I'd like for you to comment on the fact that he made some reference allegedly to his mother, and then we have the statements he made when he was in [97]

custody after his arrest on the 21st. Do you feel that he was actually suicidal?

A. I think that, yes, he was.

Q. Now, he certainly had the opportunity to commit suicide the evening when the gun was found in his bed. If we say the gun was loaded and operable, he certainly had the ability to commit suicide then, didn't he?

A. Yes.

Q. And he certainly had the ability to commit suicide June 20th or 21st, whenever after he picked up the gun that he used to kill the officer with, he had the ability to kill himself then, didn't he?

A. Yes.

Q. You are aware, Doctor, that the defendant successfully completed his junior year at Flagstaff High School, aren't you?

A. Um, I guess it was my understanding that he didn't complete all of the courses. And whether or not they gave him credit for the year or not, I'm not sure.

Q. Okay. I believe the testimony was – and I can stand corrected – but I believe he took correspondence classes in the fall semester, completed only one of those, but then successfully completed his classes and received passing grades in the spring [98] semester.

A. Okay.

Q. Would you agree with that? Would you take issue with that, I'll ask?

A. No.

Q. Okay. Wouldn't you say it's just a supposition on your part that the movie, Matrix, may have enhanced the fear of the defendant with regards to police officers?

A. It may – it may have enhanced or reflected, but, yes, it is speculation.

Q. Now, I'd like to talk about reports generated. And I'd like to talk about reports you generated in a forensic capacity as opposed to a clinical capacity. And let me ask you, how long have you been a forensic physician?

A. I started doing forensic work, um, not long after I finished my residency in 1982. So, really, probably '83, '84 I was hired to do some consultations to our court clinic in Pima County, and I graduated more and more as time went on.

Q. So you've continuously done forensic reports?

A. Yes.

Q. Okay. I should say forensic evaluations and the resulting forensic reports?

[99] A. Yes.

Q. And you undoubtedly know the purpose of writing a forensic report, don't you?

A. Yes.

Q. And the importance of being accurate with a forensic report?

A. Yes. Of course.

Q. You know the parties rely on the accuracy and the completeness of the reports. You agree to that?

A. Yes.

Q. And the parties consider the report a reflection of your efforts in the evaluation process?

A. Yes.

Q. And you know the report can have a significant impact on the outcome of a case?

A. It may.

Q. An example here, your report, which I should say has been admitted to the Court, it's not just something you were going to testify from. The Judge is actually going to get to read it and consider it during his deliberations. Your report could make the difference between the defendant possibly spending the rest of his life in prison and the defendant spending the rest of his life in a mental institution. You understand that?

A. Yes.

[100] Q. And you certainly take your responsibility seriously?

A. Yes, I do.

Q. You would never knowingly place false information in the report?

A. No.

Q. And you would never skew an opinion one way or another?

A. Skew an opinion in what way? What do you mean?

Q. Yes. If you're retained by one side, you remain a scientist, you remain a physician, and just because you're being paid by one side, you don't lean towards one side?

A. I strive for objectivity.

Q. And the Court and the parties can accept that the conclusions as reflected in your report are correct to the best of your ability?

A. The Court can accept my opinion as correct?

Q. Yeah. Well, your – the different things reflected in your report as being correct?

A. Yes.

Q. Now, I'd like to go back to your conclusion again – well, before I do that, let me ask you this: I notice no where in your report is there any language [101] regarding the reasonable degree of medical probability. Was that an intentional omission or an inadvertent omission?

A. Um, I don't usually use that language.

Q. Is there a particular reason?

A. Well, the reason is is that, you know, it's something that's debated and is debated in, you know, the circles that – where we discuss, you know, how to do forensic reports and how to approach forensic cases. And there's kind of a mixture of opinions about, you know, whether that should be in the report or whether that's desirable or not. And, you know, it's not something that I've had a strong feeling about. And I've certainly given oral testimony here that these are to a reasonable degree of medical probability, but I typically don't include that in my reports.

Q. Again, if we could go to page seven of the report, the last couple sentences: It is not known what Mr. Clark was thinking or perceiving at the time of the alleged offense, but given that he was very psychotic before and after the alleged offense, it is reasonable to infer that his perceptions of what was transpiring at the time of the alleged offense was probably bizarre and a distortion of reality; thus, there are considerable evidence that indicates Mr. Clark probably did not know [102] his acts were wrong at the time of the alleged offense. And the word I'd really like to emphasize here, the word you use, infer, and this brings us back to where we were this morning when we broke, Roman numeral page XXXII in the DSM-IV –

MR. POWELL: Judge, do you still have your copy?

THE COURT: Yes, I do. What page are you on, counsel?

MR. POWELL: Judge, its in the beginning, it's Roman numeral – which always confuses me – but it's XXXII.

THE COURT: Okay.

Q. BY MR. POWELL: And, Doctor, the reason I'm giving you the actual treatise is so that you can follow and make sure I'm not misstating anything. And I'd like to look at Use Of DSM-IV In Forensic Settings. And it begins – and just ask if this is correct – When the DSM-IV categories, criteria, and textual descriptions are employed for forensic purposes, there are significant risks that diagnostic information will be misused or misunderstood.

Do you agree with that?

A. Yes.

Q. If we go down just to the third line on the [103] next page: In most situations, the clinical diagnosis of a DSM-IV mental disorder is not sufficient to establish the existence for legal purposes of a "mental disorder," "mental disability," "mental disease," or "mental defect."

Is that a correct reading?

A. Yes.

Q. And do you agree with that?

A. Yes.

Q. And you agree that the phrase "mental disease" and the phrase "mental defect" are the two phrases used in our insanity statutes?

A. Yes.

Q. If we could go down to the next paragraph, about halfway, in the beginning on the far left is: Moreover. And I'm going to read that.

Moreover, the fact that an individual's presentation meets the criteria for a DSM-IV diagnosis does not carry any necessary implication regarding the individual's degree of control over the behaviors that may be associated with the disorders. Even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is (or was) unable to control his or her behavior at a particular [104] time.

Do you agree with that?

A. Yes.

Q. Now, Doctor, is it your opinion that, as reflected in your report, which we know you take very seriously, you're asking the Court to infer from the fact that the defendant was psychotic before and the defendant was psychotic afterwards, that he was psychotic at the time and was insane at the time? Is that what you're asking the Court to do, to infer?

A. Maybe you can repeat that question.

Q. We have read your conclusion where you ask or you state: It is reasonable to infer. And what you're asking the Court to infer is that because the defendant was psychotic beforehand, before the murder, was psychotic afterwards, he was therefore psychotic and insane at the time of the murder. Is that what you're doing?

A. Well, no, not really, because, you know, I'm inferring, and this is my opinion, it's very clear to me, your Honor, that it is your decision to conclude whether, you know, this – this scenario that I painted a picture of was in this case what happened or not. So I'm not asking the Court to make this inference. I'm suggesting this is what I believe probably happened, but it's up to [105] you, Judge Coker, to decide whether he believes that's the case or not.

Q. But even if it's you inferring, that is prohibited from this language in the DSM-IV, is it not?

A. No.

Q. Even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is (or was) unable to control his or her behavior at a particular time.

A. Yes. And that's what we talked about earlier, that schizophrenia does not equate with legal insanity.

Q. And no where in your report have you placed your thoughts, your impressions of the facts of the case leading up to and after the murder and during the murder to allow the Judge to evaluate what your thoughts are there with regard to step two?

A. I'm not sure I understand the question.

Q. Do you agree that because the defendant – if we accept he was psychotic before and he was psychotic afterwards, that alone is not enough for an insanity finding?

A. That's correct.

Q. But isn't that what you're asking the Court indirectly? Isn't what you're asking the Court to do in [106] this last paragraph?

A. Well, um, no. I don't – I don't think – I mean, you made it extremely simplistic. I think that what I'm trying to state is to give all of the background and then describe, you know, in a kind of paraphrased, brief way, a summary way, what I believe was likely, probably what was going on at the time of the offense in Mr. Clark's mind, and trying to provide that information to the Court, to Judge Coker, so he can make a reasoned decision.

Q. But you haven't given Judge Coker any information with how you deal with the Thorpe Park incident where the defendant told people he was going to do what he did, and you haven't given him any explanation as to why the defendant ran and was so successful in hiding,

why he concealed a weapon; you haven't done any of that in your report, have you?

A. No, I have not.

MR. POWELL: If I could have just a minute, your Honor.

THE COURT: Certainly.

Q. BY MR. POWELL: Doctor, in that you have not stated everything that you considered, particularly the facts surrounding the incident, the murder, you performed no tests on the defendant, you didn't do a complete [107] analysis under the DSM-IV by hitting all five axes, things like this, Doctor, doesn't that make you feel that your evaluation is deeply flawed?

A. No. I do not feel that my evaluation is deeply flawed. I have a great deal of experience working with schizophrenic patients, I have considerable experience working with forensic science. The kind of problems that Mr. Clark presents with are classic for schizophrenia. There is very little doubt about that in my mind. And so, no, I do not think in any way my report is deeply flawed.

Q. And, Doctor, you just explained the point I'm trying to make here. We're not disagreeing with paranoid schizophrenia, we're disagreeing with sanity versus insanity.

Thank you.

THE COURT: Thank you, counsel.

Mr. Middlebrook.

REDIRECT EXAMINATION

BY MR. MIDDLEBROOK:

Q. You ever worked for the State of Arizona?

A. Worked for?

Q. Have you ever worked as an expert with the State of Arizona?

A. Yes.

[108] Q. And have you worked with Mr. Powell?

A. Ah, yes, I have.

Q. And have you written reports for Mr. Powell?

A. I don't recall whether I actually wrote a report for him or not.

Q. Is it a fair statement to say that as to the reports that you made, they follow a similar format as to the one that you created here?

A. Yes.

Q. And when you were telling us that you strive for objectivity, would you agree, based on your experience in the forensic world, that both the state and the defense hire you on a regular basis for your evaluations?

A. Yes.

Q. And, based on your prior work, as well as offering reports after evaluations are conducted, the state has relied on those reports for the purposes of prosecuting individuals. Is that a fair statement?

A. I'm – I'm – I mean, they haven't relied on them to prosecute them, but to answer some issue of a psychological nature in the course of their prosecution, yes.

Q. Correct. All right. I would like to talk to you about some of the records that were reviewed that Mr. [109] Powell talked to you about. You reviewed a lot of police reports and you saw how these police interviews were being conducted, especially with Eric's friends and his family?

A. Yes.

Q. Would you agree with me that as you read throughout these reports, the police are predominantly focused on Eric's drug behavior?

A. Yes. There was a big focus on that.

Q. And very minimal reflection of Terry and Dave Clark's statements to the police just as they were being put into the patrol car that Eric has a mental disease, there is almost no questioning about that with these many, many, many witnesses. Is that a fair statement?

A. It's very little, if any, that I recall.

Q. Let me ask you about this drug use. Does drugs such as marijuana and alcohol cause schizophrenia?

A. No.

Q. And the level of psychosis that you gleaned from the records and from your observations of Eric, would that be consistent with mere drug use?

A. Well, in Mr. Clark's case, I think the fact that after he was arrested and over the past three years that

he's been in the hospital or jails, it's been very clear that his psychosis has continued to be fairly [110] severe, even when he hasn't had access to any alcohol or marijuana, and I think reflects that fact that while marijuana and alcohol may have had some interaction with his schizophrenia, I don't think, you know, that it had had a major impact on making it a lot worse. Certainly didn't help any. So I think it was pretty much a neutral factor.

Q. And the statements that – well, let me just show the Judge. The statements that Mr. Powell was reflecting on in your report, he didn't read the first paragraph when he was talking about the – as reflected in your report on page four. Here it says that you noted in your report that as of 6-23-00, that he was screaming, it's all part of the experiment, and then later says, fuck you, you all fucking aliens, et cetera. I mean, clearly the day after or several days after his – or a day after his arrest, he's talking about some type of experiment that is occurring in some unrealistic fashion. Correct?

A. Reflecting his delusional thoughts, yes.

Q. The testimony about the Thorpe Park incident isn't entirely reflected in the police reports, and so I'd like to summarize the testimony as to those witnesses. They indicated that, first of all, Eric did not look right, looked like something – perhaps he was [111] under the influence or he was on something, and that after he makes these statements about – and they're varying statements as to what he actually said – that one individual, Mark Fields, recalls him – actually, they brought – he brought up the issue of police and that police may come and Eric said, F the police, you know, I'll shoot them or – and he kind of held up his hand, and Mr. Fields said, did not take him

seriously, thought it was just the alcohol talking, that was the actual testimony. Another witness, Jason Tackett, said that Eric just walked up out of the clear blue and started talking about shooting the police, et cetera, and it was apparent to him, to Jason Tackett, that Eric was not all there when he was saying that, as well.

So when you look at what was actually occurring at the Thorpe Park incident, Doctor, does it make any sense that that was some type of preface to a plan that Eric later was going to carry out?

A. No –

MR. POWELL: Judge, I'm going to object. I mean, that calls for an opinion. That's really outside the scope of his expertise, just if someone's talking about it.

THE COURT: I think it goes to the weight of the testimony. I will allow the testimony and [112] consider it for the weight it deserves.

MR. MIDDLEBROOK: Thank you.

Q. BY MR. MIDDLEBROOK: Based on your experience and your review of the evidence, was Eric even at that time capable in your mind of planning several weeks in advance what was going to happen?

A. Oh, no.

Q. In regard to plan, I know that you reviewed the 4-24 arrest, but I know that Mr. Powell in asking you questions about the night of the shooting – or excuse me – the early morning of the shooting, something to the effect that Eric had to go get a gun, as – as you recall – let me ask

you this: You recall on 4-24 that Eric was arrested for DUI and he was coming back from a senior ditch day party?

A. Yes.

Q. I'm going to show you Officer Hoyt's report, some of the items that was taken off of Eric at that time. You can see that I have highlighted the area where Officer Hoyt, with Eric coming back from a senior ditch day party, had a small pepper spray canister in his left front pocket with the safety off ready to fire, he had a metal police type flashlight, nonfunctioning one, with a fabricated tape handle creating a club between the door and driver's seat, a U.S. Army special forces switchblade [113] knife, found also in the driver's door. Also, as we look down, and I didn't highlight it, but there was a – was a bird in the vehicle which was taken by the tow truck driver, and there were bottle caps of Old English Malt Liquor, 40-ounce bottles.

Okay. Thank you, Josh.

Knowing that those were the items, does that – does that reflect on whether Eric, on the morning of 6-22-2000, in any manner was trying to carry out a plan by having a handgun on him?

A. No. I think he was afraid. I think that, you know, when he was actually in the patrol car with the police, it was my understanding that the police officer was driving and he struggled through the metal window to the point – fortunately, the officer was able to stop before some harm came to anyone. And, you know, it was a very precarious situation. His behavior was very strange and bizarre at that time.

Q. And we're talking about the April 24th arrest?

A. Yes.

Q. Let me show you one other thing about that arrest.

MR. POWELL: Judge, I'm going to object as being outside the scope.

THE COURT: Counsel, you are getting [114] outside the scope.

MR. MIDDLEBROOK: I'm sorry?

THE COURT: You're getting outside the scope.

MR. MIDDLEBROOK: They were talking about the 4-24 arrest, Judge. This is still the 4-24 arrest.

THE COURT: I know, but –

MR. MIDDLEBROOK: Okay. I'll move on. It's okay.

THE COURT: Thank you.

Q. BY MR. MIDDLEBROOK: There were – did you consider the fact that Eric had made threats to other people in reaching the conclusions that you did in this case?

A. Yes. Yes. He's threatened several; his mother, brother, and others.

Q. Doctor, when Mr. Powell was asking you about, again, why you did not put specific events in leading up to – or what occurred immediately prior to and after the shooting, why didn't you put that information in your report?

A. Why didn't I put it in? I don't usually recite the allegations that are made in the police reports and other similar documents.

Q. Do you feel that it's your job when you are [115] creating this forensic report to reiterate the state's case?

A. No.

Q. Are you aware that Dr. Moran in this case has told me in an interview the following, page 22 of the interview, the highlighted portion says: Do you believe there were any preparatory acts by Eric in setting up this shooting? And he states: I don't know.

A. Yes, I was aware of that.

Q. So even the state's expert doesn't believe that Eric was in any manner trying to set up this shooting?

MR. POWELL: I'm going to object on hearsay grounds.

THE COURT: Causes some speculation for what somebody else is going to say.

MR. MIDDLEBROOK: I will move on.

THE COURT: Okay. Thank you. Sustain the objection.

Q. BY MR. MIDDLEBROOK: I'd like to talk about the GAF scoring that Mr. Powell discussed with you at length. Let's – let me see if I can find – oh, there it is. As we look at this GAF score – first of all, is GAF intended to be used as a tool by a mental health provider to measure the extent or the depth of a [116] delusion?

A. No.

Q. Is it an – is there any type of accuracy – simply because we try to make numerical scores of things, is there any type of accuracy to it?

A. Um, you know, you could just as easily use some, you know, just language, mild, moderate, severe, with qualifiers. Its really just a very simple kind of scale to gauge someone's overall level, overall level of function.

Q. Can someone – if you as a clinician, you are admitting a patient, is it simply when you do it at that point, just a snapshot of what that person is doing at that moment in time?

A. The GAF score?

Q. Correct.

A. It is either used as a snapshot at that time, in recent past, or you say highest level of functioning in GAF in the score in the last year was whatever, so sometimes it's used that way to communicate, you know, the level of functioning of individuals among professionals.

Q. But as we look at these behaviors, can these behaviors that are reflected in the GAF score change rapidly?

[117] A. Oh, yes. I mean, they do. So you're trying to look at, you know, the – often the level of functioning over a period of time, not just, you know, that one juncture.

Q. Okay. And then when were talking about the GAF scores, for example, the fact that you may admit a patient, for example, and they have a GAF of 30, 31, does that mean that within moments if they were, for example, to

attack an orderly, that their GAF score would immediately drop?

A. No, not usually. And it's just not usually used that way.

Q. There's no correlation to do it that way?

A. No. It's not that kind of precision instrument in any way.

Q. Mr. Powell wrote up here the words "never," "probably bizarre," "probably did not know acts were wrong." What he left out of significance of that last sentence is, don't you indicate in there in the very last sentence, there is considerable evidence that indicates Mr. Clark probably did not know his acts were wrong at the time of the alleged offense?

A. Yes.

Q. And when we talk about inference, we're talking about inferences made from the evidence that was [118] presented to you?

A. Yes.

Q. And the observations, your evaluation process?

A. Yes.

Q. So we have to add here considerable evidence.

There was a lot of discussion about the Clarks making statements to the effect that when they left Eric at the movie, he was normal, or words to that effect. I would like to tell you what their testimony was yesterday in summary, and that was when they used the word "normal," they meant normal for Eric at that time; that he – I

believe Mr. Clark indicated that he was constantly paranoid and that it was a constant factor of him doing odd things. Mrs. Clark basically said the same thing. Also, what you didn't have, because I just received a transcript in the middle of this trial, was Carden Hakes's testimony, and I believe I forwarded that transcript to you where he indicates yesterday in testifying, that when he saw Eric at the Harkin's Theater, that he did not look normal. He looked like he might have been under the influence of something.

When you bear that in mind, Doctor, does it indicate to you in any manner that Eric was not going – could not be predisposed to violence simply because of his appearances at that time?

[119] A. That's correct.

Q. I would also like – if you review the records, as well as the testimony in this case, that minutes before this shooting occurred, Mike Greenway testified that Eric's eyes were wild like or wild. Susan Rinck, in her statement to the police, indicated there was something wrong with his eyes or there was a wild look in his eyes. Again, was that reflective of Eric's propensity or and/or likelihood that he – a violent act could occur?

A. I think it's more reflective it's another common kind of symptom seen in schizophrenia and more commented on by the family, he would like look through you, stare through you. As is often seen with schizophrenics, they don't have good eye contact with the people that they're talking to. They're staring beyond you or at walls or at something else. So I think it's reflective in schizophrenia. And going back to what we talked about earlier, the violence associated with schizophrenics can be totally

unpredictable, come out of the blue, be completely unexpected. So you couldn't tell just because he looked, you know, wild-eyed or odd what he was going to do next.

Q. And that leads more or less to my final question. Doctor, when you indicate in your opinion that [120] when you considered the evidence both before and after Eric's arrest or involvement in this shooting, was there ever windows of lucidity that Eric ever experienced during this time?

A. Not that I could find, no.

Q. And is it apparent to you that his delusions were continuous and chronic?

A. Yes, they are. They continue today.

Q. And when you interviewed him this morning?

A. Yes.

Q. Still existing?

A. They are still present.

Q. Thank you, Doctor.

MR. POWELL: Your Honor, may I have a bit of follow-up to straighten out some confusion?

THE COURT: It works both ways.

MR. POWELL: Absolutely, Judge. It's something Mr. Middlebrook didn't have personal knowledge of.

FURTHER CROSS-EXAMINATION

BY MR. POWELL:

Q. Doctor, we've worked, I don't want to say together, but we've worked on a common case in the past, haven't we?

A. Yes.

[121] Q. And I can remind you it was State versus Corona, a first degree murder in Yuma?

A. Sure. Okay.

Q. And in there you were actually acting as a defense expert, were you not?

A. Yes, I was.

Q. You were hired by Mike Teller. (phonetic) Correct?

A. Yes.

Q. You were not hired by the state?

A. No.

Q. Okay. And I –

A. I may have been court appointed originally in that case. I don't recall.

Q. Okay. I don't recall either. But, actually, I got to cross-examine you, much like I did today, in that case?

A. Yes.

MR. POWELL: Okay. I just wanted to clear that up, Judge.

THE COURT: Thank you.

Doctor, thank you for coming today. We do appreciate you being here. You're excused.

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